IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 31895 of 2004(V)

AGAINST THE ORDER DATED 10/09/2004 IN IA.1582/04 IN
OS.47/1998 of MUNSIF COURT, KUTHUPARAMBA

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PETITIONERS:

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1. CHERUVARI VIMALA, D/O. NARAYANI,
RESIDING AT `BOBBY NIVAS', KOTTAYAM AMSOM
AND DESOM, THALASSERY TALUK, P.O. POOKODE
KANNUR DISTRICT.

2. CHERUVARI SOUMINI, D/O. NARAYANI,
DEAF AND DUMB BY BIRTH THROUGH THE NEXT FRIEND
SISTER CHERUVANI VIMALA, RESIDING AT
`BOBBY NIVAS' KOTTAYAM AMSOM AND DESOM
THALASSERRY TALUK, P.O. POOKODE,KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

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1. CHERUVARI PADMINI, D/O. NARAYANI
RETD.TEACHER, RESIDING AT EDATHIL HOUSE,
MANANTHERI AMSOM, CHITTARIPARAMBA DESOM
THALASSERRY TALUK, P.O. CHITTARIPARAMBA,
KANNUR DISTRICT.

2. CHERUVARI VIJAYAN, S/O. NARAYANI,
RESIDING AT `SOURMYA' KOTTAYAM AMDOM AND
DESOM, THALASSERRY TALUK, KANNUR DISTRICT.

3. CHERUVARI VISWANATHAN,
S/O. NARAYANI, TECHNICIAN IN GOVERNMENT SERVICE
RESIDING AT `USHAS', KOTTAYAM AMSOM
AND DESOM, THALASSERRY TALUK,
P.O. POOKODE, KANNUR DISTRICT.

R2 BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL
R1 & R3 BY ADV.SRI.R.SURENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER DT.10.09.04 PASSED BY THE LEARNED MUNSIFF, KUTHUPARAMBA.

EXT.P2 : TRUE COPY OF THE PLAINT IN OS NO.47 OF 1998 ON THE FILE OF THE MUNSIFF COURT, KUTHUPARAMBA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31895 OF 2004

Dated this the 25th day of May, 2007

JUDGMENT

The plaintiff impugns the order passed by the Trial court, on an application for remitting the second plan and report of the Commissioner, dismissing the application. Notwithstanding the very persuasive submissions of Sri.Kaleeswaram Raj, learned counsel for the petitioner, I am unable to agree with him when he says that the impugned order is so wholly unreasonable as to warrant correction under the supervisory jurisdiction of this Court under Article 227 which is visitorial in nature and it is not expected to be invoked in each and every case. The suit I gather is for cancellation of certain documents on the ground of fraud and mis-representation and also for partition. Mr.Ray would submit that a report regarding the extent actually covered by impugned documents will be of much relevance and assistance to the Court in taking a correct decision as to whether the documents ought to be set aside. In other words the argument is that the circumstance that the documents do not take in the properties actually available will be of considerable moment and will go a long way towards establishing the petitioners' case that the documents are bad on the ground raised in the plaint. But as already indicated, the concern of this Court in

proceedings under Article 227 is to consider whether the order of the court below can be said to be wholly unreasonable. According to me the order will certainly stand the scrutiny of this Court under Article 227. As for the grievance of the petitioners, even as I confirm the impugned order,I make it clear that the petitioner will have the liberty of adducing whatever legal evidence at his command preferably documentary evidence which will substantiate his contention regarding the extent. If the court below comes to be convinced regarding the petitioners case about extent on the basis of such evidence, this judgment will not stand in the way of court below entertaining another application for commission in future.

2. The learned Munsiff will make every endeavour to have an early disposal of the suit and will at any rate dispose of the suit within six months of receiving copy of this judgment.

The Writ Petition is disposed of as above. No costs.

PIUS C. KURIAKOSE, JUDGE

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